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*(As read a first time)*

**SOCIAL SECURITY AND VETERANS' AFFAIRS LEGISLATION  
AMENDMENT BILL 1990**

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1990

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA  
HOUSE OF REPRESENTATIVES

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Presented and read a first time, 9 May 1990

*(Minister for Community Services and Health)*

**A BILL**

FOR

**An Act to amend the law relating to social security and  
veterans' affairs, and for related purposes**

BE IT ENACTED by the Queen, and the Senate and the House of  
Representatives of the Commonwealth of Australia, as follows:

**PART 1—INTRODUCTORY**

**Short title**

5     **1.** This Act may be cited as the *Social Security and Veterans' Affairs  
Legislation Amendment Act 1990*.

*Commencement: Day of Royal Assent*

**Commencement**

10     **2.** Each provision of this Act commences, or is taken to have  
commenced, as the case requires, on the day shown by the note in  
italics at the foot of the provision.

*Commencement: Day of Royal Assent*

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relation to payments under the *Social Security Act 1947* that fall due on or after the day on which this Act receives the Royal Assent.

*Commencement: Day of Royal Assent*

5 **PART 2—AMENDMENTS OF THE SOCIAL SECURITY ACT**  
**1947**

**Principal Act**

4. In this Part, “**Principal Act**” means the *Social Security Act 1947*<sup>1</sup>.

*Commencement: Day of Royal Assent*

**Interpretation**

10 5. Section 3 of the Principal Act is amended:

(a) by inserting after paragraph (ka) in the definition of “income” in subsection (1) the following paragraph:

15 “(kb) an amount paid by way of compensation by the Republic of Austria under the laws of that Republic relating to compensation of victims of National Socialist persecution;”;

*Commencement: 4 December 1989*

(b) by inserting in subsection (1) the following definition:

20 “‘**AUSTUDY allowance**’ means a benefit paid under the AUSTUDY scheme;”.

*Commencement: 20 September 1990*

**Rate of pension**

6. Section 33 of the Principal Act is amended by inserting after subsection (4) the following subsections:

25 “(4A) Subsection (3) does not apply in relation to a person who has a dependent child, or dependent children, of a kind mentioned in that subsection if:

30 (a) the person is entitled to claim maintenance from another person for the child, or for each of the children, as the case may be; and

(b) the Secretary considers that it is reasonable that the person should have taken action to obtain the maintenance; and

(c) the person has not taken action that the Secretary considers reasonable to obtain the maintenance.

35 “(4B) Where:

(a) a person is entitled to claim maintenance from another person for a dependent child; and



“(8) In this section:

‘specified foreign country’ means a foreign country in respect of which a notice under subsection (6) is in force.”.

*Commencement: 1 July 1990*

5 **Payment of allowance**

8. Section 76 of the Principal Act is amended:

(a) by omitting from subsection (3) “4 weeks” and substituting “the allowable period”;

(b) by adding at the end the following subsection:

10 “(4) For the purposes of subsection (3), the allowable period is:

(a) if the child is one of 3 or more children born during the same multiple birth—13 weeks; or

(b) in any other case—4 weeks.”.

15 *Commencement: 1 November 1989*

**Rate of unemployment and sickness benefit**

9. (1) Section 118 of the Principal Act is amended:

(a) by omitting paragraph (1) (b) and substituting the following paragraphs:

20 “(b) where the beneficiary is a married person who:

(i) has not turned 18; and

(ii) has no dependent child;

\$57.60 per week;

(ba) where the beneficiary is a married person who:

25 (i) has turned 18 but has not turned 21; and

(ii) has no dependent child;

\$105.15 per week;

(bb) where the beneficiary is an unmarried person who:

30 (i) has turned 18 but has not turned 21; and

(ii) has no dependent child; and

(iii) is living at a home of his or her parent or parents;

\$69.20 per week;

(bc) where the beneficiary is an unmarried person who:

35 (i) has turned 18 but has not turned 21; and

(ii) has no dependent child; and

(iii) is not living at a home of his or her parent or parents;

\$105.15 per week;”;

40 (b) by inserting in paragraph (1A) (c) “an AUSTUDY allowance or” after “receiving”;

(c) by omitting subsection (2) and substituting the following subsections:

“(2) Subject to sections 121 and 122, where:

(a) a married person:

- (i) has turned 21; and 5
- (ii) has no dependent child; and
- (iii) is qualified to receive an unemployment or sickness benefit; and

(b) the person's spouse:

- (i) has turned 21; and 10
- (ii) is an Australian resident living in Australia; and
- (iii) is, in the opinion of the Secretary, dependent (whether substantially or otherwise) on the person; and
- (iv) is not in receipt of an AUSTUDY allowance or a prescribed pension or, apart from section 153, would be eligible to receive a prescribed pension; 15

the rate of the benefit applicable to the married person under subsection (1) must be increased:

(c) if, in the opinion of the Secretary, the spouse is substantially dependent on the person—by an amount per week equal to the amount specified in paragraph (1) (f); and 20

(d) in any other case—by such amount per week (if any) as the Secretary considers reasonable in the circumstances, being an amount per week that is not more than the amount so specified. 25

“(2AA) Subject to sections 121 and 122, where:

(a) a married person:

- (i) has a dependent child; and 30
- (ii) is qualified to receive an unemployment or sickness benefit; and

(b) the person's spouse:

- (i) is an Australian resident living in Australia; and
- (ii) is, in the opinion of the Secretary, dependent (whether substantially or otherwise) on the person; and 35
- (iii) is not in receipt of an AUSTUDY allowance or a prescribed pension or, apart from section 153, would be eligible to receive a prescribed pension; 40

the rate of the benefit applicable to the married person under subsection (1) must be increased:



(c) if, in the opinion of the Secretary, the spouse is substantially dependent on the person—by an amount per week equal to the amount specified in paragraph (1) (f); and

(d) in any other case—by such amount per week (if any) as the Secretary considers reasonable in the circumstances, being an amount per week that is not more than the amount so specified.”;

(d) by inserting in paragraph (4) (b) “an AUSTUDY allowance or” after “in receipt of”;

(e) by inserting after subsection (5) the following subsection:

“(5A) Where, apart from this subsection, subsection (5) would apply in relation to a person having a child or children of a kind mentioned in that subsection, it does not so apply if:

(a) the person is entitled to claim maintenance for the child, or for each of the children, as the case may be; and

(b) the Secretary considers that it is reasonable that the person should have taken action to obtain the maintenance; and

(c) the person has not taken action that the Secretary considers reasonable to obtain the maintenance.”;

(f) by inserting after subsection (11) the following subsection:

“(11A) Where:

(a) a person is entitled to claim maintenance from another person for a dependent child; and

(b) the Secretary considers that it is reasonable that the person should have taken action to obtain the maintenance; and

(c) the person has not taken action that the Secretary considers reasonable to obtain the maintenance;

subsection (11) does not apply in relation to the child.”.

*Commencement: 20 September 1990*

(2) Section 118 of the Principal Act is amended by omitting subparagraph (5) (b) (ii).

*Commencement: 1 January 1990*

(3) Despite the amendments made by this Act, where, immediately before 20 September 1990, paragraph 118 (1) (f) of the Principal Act covered a beneficiary who:

(a) is a married person; and

(b) has not turned 21; and

(c) has no dependent child;

then, while the person remains continuously qualified to receive the relevant benefit, that Act as amended by this Act, applies in relation to the person as if there were substituted for the rate specified in paragraph 118 (1) (b) or (ba) of that Act, as so amended, the rate that would have applied if paragraph 118 (1) (f) of the Principal Act had continued to cover the person. 5

*Commencement: 20 September 1990*

**Indexation of unemployment and sickness benefits etc.**

10. Section 119 of the Principal Act is amended by omitting “or (b)” from the definition of “junior or intermediate rate” in subsection (1) and substituting “, (b), (ba), (bb) or (bc)”. 10

*Commencement: 20 September 1990*

**Parental assets and income tests**

11. Section 121A of the Principal Act is amended:

(a) by inserting after subsection (2), the following subsections: 15

“(2A) If:

(a) a person is a person to whom this section applies; and

(b) the amount of:

(i) if the person has only one parent—the value of the property of the parent; or 20

(ii) if the person has more than one parent—the sum of the value of the property of the parents;

exceeds \$322,750;

the rate per week of the benefit that is applicable to the person is to be reduced to \$26.90 per week. 25

“(2B) Nothing in subsection (2A) prevents the application of section 122 to the rate of benefit remaining after the application of subsection (2A).”;

(b) by inserting in subsection (3) “subsection (2A) does not apply to a person to whom this section applies and” after “where”; 30

(c) by omitting from subsection (3) “a person to whom this section applies” and substituting “the person”;

(d) by omitting from subsection (4) “this section” (wherever occurring) and substituting “subsection (3) and this subsection”.

*Commencement: 20 September 1990* 35

12. After section 121A of the Principal Act the following section is inserted:

**Indexation of parental assets test threshold**

“121AA. (1) In this section:

5 **‘index number’**, in relation to a quarter, means the All Groups Consumer Price Index number, being the weighted average of the 8 capital cities, published by the Australian Statistician in respect of that quarter;

**‘indexation amount’** means the amount of \$322,750 specified in subsection 121A (2A);

**‘index year’** means the period of 12 months commencing on 1 January 1990 and each succeeding period of 12 months.

10 “(2) Subject to subsection (3), if at any time, whether before or after the commencement of this section, the Australian Statistician has published or publishes an index number in respect of a quarter in substitution for an index number previously published by the Australian Statistician in respect of that quarter, the publication of the later index  
15 number shall be disregarded for the purposes of this section.

“ (3) If at any time, whether before or after the commencement of this section, the Australian Statistician has changed or changes the reference base for the Consumer Price Index, then, for the purposes of the application of this section after the change took place or takes  
20 place, regard shall be had only to the index number published in terms of the new reference base.

“ (4) Where the factor ascertained under subsection (5) in relation to an index year is greater than one, this Act has effect as if for the indexation amount there were substituted, on the first day of the index  
25 year, an amount calculated by multiplying by that factor:

(a) in a case to which paragraph (b) does not apply—the indexation amount; or

(b) if, because of another application or other applications of this section, this Act has effect as if another amount or other  
30 amounts were substituted for the indexation amount—the substituted amount or the last substituted amount.

“ (5) The factor to be ascertained for the purposes of subsection (4) in relation to an index year is the number (calculated to 3 decimal places) ascertained by dividing the index number for the June quarter  
35 immediately preceding the index year by the index number for the June quarter immediately preceding the first-mentioned June quarter.

“ (6) Where the factor ascertained in accordance with subsection (5) in relation to an index year would, if it were calculated to 4 decimal places, end with a number greater than 4, the factor ascertained in  
40 accordance with that subsection in relation to that index year shall be taken to be the factor calculated to 3 decimal places in accordance with subsection (5) and increased by 0.001.

“ (7) Where:

(a) apart from this subsection, the application of this section would result in an amount (in this subsection called the '**substituted amount**') being substituted for an indexation amount; and

(b) the substituted amount is not a multiple of \$250;

the following provisions have effect:

(c) if the substituted amount is a multiple of \$125—the substituted amount shall be increased by \$125;

(d) if the substituted amount is not a multiple of \$125—the substituted amount shall be increased or reduced to the nearest multiple of \$250.”.

*Commencement: 20 September 1990*

### **Income and assets test**

13. (1) Section 122 of the Principal Act is amended by inserting in subsection (2) “an AUSTUDY allowance or” after “in receipt of”.

*Commencement: 20 September 1990*

(2) Section 122 of the Principal Act is amended:

(a) by omitting subsection (4) and substituting the following subsection:

“(4) For the purposes of subsection (1A) and the definition of ‘threshold rate’ in subsection (11), the income of a married person includes the income of the person’s spouse, other than an AUSTUDY allowance received by the person’s spouse.”;

(b) by omitting from subsection (11) the definition of “threshold rate” and substituting the following definition:

“‘**threshold rate**’, in relation to a married person who has an income, means \$60 per fortnight.”;

(c) by adding at the end the following subsection:

“(12) For the purposes of this section:

(a) if:

(i) a married person has income from personal exertion but his or her spouse does not; or

(ii) a married person’s spouse has income from personal exertion but the person does not;

the person’s threshold rate is to be increased by so much of the rate of that income as does not exceed \$30 per fortnight; and

(b) if both a married person and his or her spouse have income from personal exertion—the person’s threshold rate is to be increased by:

(i) so much of the person’s rate of income from personal exertion as does not exceed \$30 per fortnight; and

- (ii) so much of the spouse's rate of income from personal exertion as does not exceed \$30 per fortnight."

*Commencement: 20 September 1990*

- 5 (3) Section 122 of the Principal Act is amended:
- (a) by inserting in subsection (10) "and subsection (10A) of this section" after "section 7";
- (b) by omitting from subsection (10) "who has attained the age of 25 years";
- 10 (c) by inserting after subsection (10) the following subsection:
- "(10A) Subsection (10) does not apply to a person if the person:
- (a) has not turned 18; and
- (b) is an unmarried person; and
- 15 (c) does not have a dependent child; and
- (d) is not an independent young person or a homeless person."

*Commencement: 20 September 1990*

- 20 14. After section 122B of the Principal Act the following section is inserted:

**Special arrangement for victims of major disasters**

"122BA. (1) In this section:

- 'major disaster' means the Newcastle earthquake or a disaster declared by the Minister under subsection (2);
- 25 'Newcastle earthquake' means the earthquake that caused severe damage to parts of Newcastle on 28 December 1989.

"(2) The Minister may, by notice in the *Gazette*, declare that a disaster, whether naturally occurring or caused by humans, that:

- 30 (a) caused a significant number of deaths, serious illnesses or serious injuries; or
- (b) caused significant damage to property;
- is a major disaster for the purposes of this section.

"(3) Where:

- 35 (a) a person has lodged a claim for, and is qualified to receive, unemployment or sickness benefit; and
- (b) the claim was lodged as a result of a major disaster; and
- (c) because of paragraph 125 (1) (b), (1) (e) or (3) (b), unemployment or sickness benefit is payable to the person from and including the day on which the person became unemployed or made the claim, whichever was the earlier, or became incapacitated;
- 40

the amount of benefit payable to the person in respect of the period of 7 days starting on the day referred to in paragraph (c) is twice the amount that would, apart from this subsection, be payable to the person in respect of that period.”

*Commencement: 28 December 1989*

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**Unemployment benefit not payable in certain cases**

15. Section 126 of the Principal Act is amended:

- (a) by inserting after paragraph (1)(ca) “163, 164 or” after “section”;
- (b) by inserting in subsection (2) “, (ca)” after “(c)”;
- (c) by omitting from subsection (2) “and not more than 12 weeks”;
- (d) by inserting in subsection (3) “, (ca)” before “or (d)” (wherever occurring);
- (e) by omitting from subsection (3) “shall be 4 weeks plus 2 weeks” and substituting “is 6 weeks plus 6 weeks”;
- (f) by omitting from subsection (3) “, but not more than 12 weeks”.

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*Commencement: 20 September 1990*

**Education leavers**

16. Section 127 of the Principal Act is amended:

- (a) by inserting in subsection (1) “or a sickness benefit,” after “lodges a claim for an unemployment benefit”;
- (b) by inserting in subsection (1) “or a sickness benefit, as the case may be,” after “so ceasing, an unemployment benefit”;
- (c) by inserting in subsection (1) “or incapacity for work” after “period of unemployment”;
- (d) by inserting in subsection (1A) “or sickness benefit” after “unemployment benefit” (wherever occurring);
- (e) by omitting from subsection (5) “is qualified to receive a sickness benefit or”;
- (f) by inserting in subsection (6) “or a sickness benefit” after “an unemployment benefit”;
- (g) by inserting in subsection (6) “or incapacity for work” after “period of unemployment”;
- (h) by inserting in paragraph (7)(b) “ or a sickness benefit” after “an unemployment benefit”;
- (j) by inserting in subsection (7A) “or sickness benefit” after “unemployment benefit” (wherever occurring);
- (k) by adding at the end the following subsection:

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“(9) For the purposes of subsection (1) and subsection 125 (3), where a person to whom subsection (1) applies became

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incapacitated while undertaking the course of education, the person is taken to have become incapacitated on the last day on which the person was undertaking the course.”.

*Commencement: 20 September 1990*

5 **Rate of special benefit**

17. Section 130 of the Principal Act is amended:

(a) by inserting after subsection (2) the following subsection:

“(2A) Where:

(a) a person has lodged a claim for special benefit; and

10 (b) the claim was lodged as a result of a major disaster;

the Secretary may determine that the rate of special benefit payable to the person in respect of the period of 7 days starting on the day on which the claim was made is an amount not exceeding twice the rate of unemployment benefit or sickness benefit which, disregarding section 122BA, could be paid to the person if the person were qualified to receive it.”;

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(b) by inserting in subsection (3) the following definition:

“‘major disaster’ has the same meaning as in section 122BA.”.

*Commencement: 28 December 1989*

20 18. After section 152 of the Principal Act the following section is inserted:

**Secretary may require persons to take action to obtain compensation**

“152A. (1) Where a person who is in receipt of a pension, or is eligible or qualified to receive a pension:

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(a) is or may be entitled, in the opinion of the Secretary, to a payment by way of compensation; and

(b) has taken no action, or no action that the Secretary considers reasonable, to claim or obtain such payment;

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the Secretary may require the person to take the action specified by the Secretary, being action that the Secretary considers reasonable to enable the person to claim or obtain such payment.

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“(2) Where the Secretary requires a person to take action, the person must not be granted the relevant pension, or the relevant pension ceases to be payable to the person, as the case may be, unless the person complies with the requirement.

“(3) Where a person complies with a requirement, the person is taken, for the purposes of this Act, to be eligible or qualified to receive the pension which he or she was eligible or qualified to receive before the requirement was made.”.

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*Commencement: 1 November 1990*

**Making and lodgment of claims etc.**

19. Section 159 of the Principal Act is amended:

(a) by omitting from subsection (4A) "4 weeks" and substituting "the allowable period";

(b) by inserting after subsection (4A) the following subsection: 5

"(4AA) For the purposes of subsection (4A), the allowable period is:

(a) if the child is one of 3 or more children born during the same multiple birth—13 weeks; or

(b) in any other case—4 weeks." 10

*Commencement: 1 November 1989*

**Secretary may impose certain requirements**

20. Section 170 of the Principal Act is amended:

(a) by omitting from subsection (3) "a job search allowance" and substituting "an unemployment benefit"; 15

(b) by omitting from subsection (3) "the job search allowance" and substituting "the unemployment benefit".

*Commencement: 20 September 1990*

**Some decisions are not reviewable by the Social Security Appeals Tribunal** 20

21. Section 178 of the Principal Act is amended by inserting before paragraph (a) the following paragraph:

"(aa) subsection 122BA (2);".

*Commencement: 28 December 1989*

**New Schedule 5** 25

22. The Principal Act is amended by adding at the end the Schedule set out in the Schedule to this Act.

*Commencement: Day of Royal Assent*

**PART 3—AMENDMENTS OF THE VETERANS' ENTITLEMENTS ACT 1986** 30

**Principal Act**

23. In this Part, "Principal Act" means the *Veterans' Entitlements Act 1986*<sup>2</sup>.

*Commencement: Day of Royal Assent*

**Interpretation** 35

24. Section 35 of the Principal Act is amended:

(a) by omitting "or" from paragraph (x) of the definition of "income" in subsection (1);



(b) by inserting after paragraph (y) of that definition the following word and paragraph:

“or (z) an amount paid by way of compensation by the Republic of Austria under the laws of that Republic relating to compensation of victims of National Socialist persecution;”.

*Commencement: 4 December 1989*

**PART 4—AMENDMENTS OF THE SOCIAL SECURITY AND VETERANS' AFFAIRS LEGISLATION AMENDMENT ACT (No. 4) 1989**

**Principal Act**

25. In this Part, “**Principal Act**” means the *Social Security and Veterans' Affairs Legislation Act (No. 4) 1989*<sup>3</sup>.

*Commencement: Day of Royal Assent*

**Savings**

26. Section 4 of the Principal Act is amended:

(a) by inserting in subsection (1) “having a dependent child or children” after “a person”;

(b) by omitting paragraph (1)(a) and substituting the following paragraph:

“(a) the child, or each of the children, stops being a dependent child; or”;

(c) by omitting paragraph (a) of the definition of “dependent child” in subsection (5) and substituting the following paragraph:

“(a) in relation to the operation of the *Social Security Act 1947*—a person who has turned 18 and who is a prescribed student child within the meaning of that Act as amended by this Act; and”.

*Commencement: Day of Royal Assent*

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**SCHEDULE**

Section 22

New Schedule 5

**SCHEDULE 5**

Section 65

**AGREEMENT ON SOCIAL SECURITY BETWEEN AUSTRALIA  
AND SPAIN**

Australia and Spain,

Wishing to strengthen the existing friendly relations between the two countries, and

Resolved to co-operate in the field of social security;

Have agreed as follows:

PART 1

**GENERAL PROVISIONS**

**ARTICLE 1**

Definitions

1. In this Agreement, unless the context otherwise requires:

“benefit” means in relation to a Party, a benefit for which provision is made in the legislation of that Party, and includes any additional amount, increase or supplement that is payable, in addition to that benefit, to or in respect of a person who qualifies for that additional amount, increase or supplement under the legislation of that Party;

“carer’s pension” means a carer’s pension payable to a spouse under the legislation of Australia;

“Competent Authority” means; in relation to Australia: the Secretary to the Department of Social Security; and, in relation to Spain: the Department of Labour and Social Security;

- “Competent Institution” means; in relation to Australia: the Competent Authority for Australia; and in relation to Spain: the Institution responsible under the legislation of Spain for dealing with a claim for a Spanish benefit;

“Institution” means; in relation to Australia: the Competent Authority for Australia; and in relation to Spain: the agency or authority responsible for the implementation of the legislation of Spain;

“legislation” means, in relation to a Party, the laws specified in Article 2 in relation to that Party;

**SCHEDULE—continued**

- “period of residence in Australia”, in relation to a person, means a period defined as such in the legislation of Australia, but does not include any period deemed pursuant to Article 8 to be a period in which that person was an Australian resident;
  - “Spanish creditable period” means a period, or the total of two or more periods, of contributions which has been or can be used to acquire the right to a Spanish benefit, but does not include any period considered under paragraph 1 of Article 10 as a Spanish creditable period;
  - “widow” means, in relation to Australia: a de jure widow but does not include a woman who is the de factor spouse of a man.
2. In the application by a Party of this Agreement in relation to a person, any term not defined in this Article shall, unless the context otherwise requires, have the meaning assigned to it in the legislation of either Party or, in the event of a conflict of meaning, by whichever of those laws is the more applicable to the circumstances of that person.

**ARTICLE 2**

Legislative Scope

1. Subject to paragraph 2, this Agreement shall apply to the following laws, as amended at the date of signature of this Agreement, and to any laws that subsequently amend, supplement or replace them:
- (a) in relation to Australia: the Social Security Act 1947 in so far as the Act provides for and in relation to the following benefits:
    - (i) age pensions;
    - (ii) invalid pensions;
    - (iii) wives' pensions;
    - (iv) carer's pensions; and
    - (v) pensions payable to widows,
  - (b) in relation to Spain: the legislation relating to the General Scheme and the Special Schemes of the Social Security system as they relate to the following benefits:
    - (i) benefits for temporary incapacity for work in cases of common illness, maternity or non-industrial accident;
    - (ii) invalidity;
    - (iii) old age;
    - (iv) death and survivors; and
    - (v) unemployment benefits.
2. Notwithstanding the provisions of paragraph 1 the legislation of Australia shall not include any laws made, whether before or after the date of signature of this Agreement, for the purpose of giving

**SCHEDULE—continued**

effect to any reciprocal agreement on social security entered into by either Party.

3. This Agreement shall apply to laws which extend the legislation of either Party to new categories of beneficiaries only if the two Parties so agree in a Protocol to this Agreement.

**ARTICLE 3**

Personal Scope

This Agreement shall apply to any person who:

- (a) is or has been an Australian resident; or
- (b) is or has been subject to the legislation of Spain,

and where applicable, to any spouse, dependant or survivor of such a person.

**ARTICLE 4**

Equality of Treatment

Subject to this Agreement, all persons to whom this Agreement applies shall be treated equally by a Party in regard to rights and obligations which arise whether directly under the legislation of that Party or by virtue of this Agreement.

**ARTICLE 5**

Application of Spanish Legislation

1. Where an employee or a self-employed worker who is covered by the Social Security Schemes of Spain is sent by his firm, or goes, to undertake temporary work in Australia he or she shall continue to be covered by those Social Security Schemes so long as the period of the proposed work does not exceed 5 years.
2. If, owing to unforeseen circumstances, the period of the work extends beyond 5 years, this extension may be recognized by the Competent Authority of Spain.

**PART II**

**PROVISIONS RELATING TO AUSTRALIAN BENEFITS**

**ARTICLE 6**

Residence or Presence in Spain or a Third State

1. Where a person would be qualified under the legislation of Australia or by virtue of this Agreement for a benefit except that he or she is not an Australian resident and in Australia on the date on which he or she lodges a claim for that benefit but he or she:

**SCHEDULE—continued**

- (a) is an Australian resident or residing in Spain or a third State with which Australia has concluded an agreement on social security that includes provision for co-operation in the assessment and determination of claims for benefits; and
  - (b) is in Australia, Spain or that third State,
- that person shall be deemed, for the purposes of lodging that claim, to be an Australian resident and in Australia on that date.
2. Paragraph 1 shall not apply to a claimant for a wife's pension or carer's pension who has never been an Australian resident.

**ARTICLE 7**

Spouse-related Australian Benefits

For the purposes of this Agreement, a person who receives an Australian benefit due to the fact that the spouse of that person receives by virtue of this Agreement another Australian benefit, shall be deemed to receive that first-mentioned benefit by virtue of this Agreement.

**ARTICLE 8**

Totalisation for Australia

1. Where a person to whom this Agreement applies has claimed an Australian benefit under this Agreement and has accumulated:
  - (a) a period as an Australian resident that is less than the period required to qualify him or her, on that ground, under the legislation of Australia for that Australian benefit; and
  - (b) a period of residence in Australia equal to or greater than the minimum period identified in accordance with paragraph 4 for that person;and has accumulated a Spanish creditable period then for the purposes of a claim for that Australian benefit, that Spanish creditable period shall be deemed, only for the purposes of meeting any minimum qualifying periods for that benefit set out in legislation of Australia, to be a period in which that person was an Australian resident.
2. For the purposes of paragraph 1, where a person:
  - (a) has been an Australian resident for a continuous period which is less than the minimum continuous period required by the legislation of Australia for entitlement of that person to a benefit; and
  - (b) has accumulated a Spanish creditable period in two or more separate periods that equals or exceeds in total the minimum period referred to in subparagraph (a),

**SCHEDULE—continued**

the total of the Spanish creditable periods shall be deemed to be one continuous period.

3. For all purposes of this Article, where a period by a person as an Australian resident and a Spanish creditable period accumulated by that person coincide, the period of coincidence shall be taken into account once only by Australia as a period as an Australian resident.
4. The minimum period of residence in Australia to be taken into account for the purposes of paragraph 1 shall be as follows:
  - (a) for the purposes of an Australian benefit that is payable to a person residing outside Australia, the minimum period required shall be one year, of which at least six months must be continuous; and
  - (b) for the purposes of an Australian benefit that is payable to an Australian resident there shall be no minimum period of residence in Australia.

**ARTICLE 9**

Calculation of Australian Benefits

1. Where an Australian benefit is payable by virtue of this Agreement, to a person outside of Australia, the rate of that benefit shall be determined according to the legislation of Australia.
2. Notwithstanding the provisions of the previous paragraph, when assessing the income of a person for the purposes of calculating the rate of benefit only a proportion of any Spanish benefit (or benefits) shall be regarded as income.

That proportion shall be calculated by multiplying the total number of months of that person's period of residence in Australia, which shall not exceed 300, by the amount of that Spanish benefit and dividing that product by 300.
3. A person who is in receipt of an Australian benefit under the legislation of Australia, shall be entitled to the concessional assessment of income set out in paragraph 2 of this Article for any period during which the rate of that person's Australian benefit is proportionalised under the legislation of Australia.
4. Where an Australian benefit is payable only by virtue of this Agreement to a person who is in Australia and until the person becomes eligible under Australian domestic legislation the amount of that benefit shall be determined as follows:
  - (a) according to the legislation of Australia, but without taking into account in the computation of his or her income any Spanish benefit which that person is entitled to receive, and

**SCHEDULE—continued**

- (b) by deducting the amount of that Spanish benefit from the amount of the Australian benefit to which that person would otherwise be entitled.
5. Where a married person, or that person and his or her spouse are in receipt of a Spanish benefit or benefits, it shall be deemed, for the purposes of implementing paragraph 4 and the legislation of Australia, that each one of them receives one half of the amount of the benefit or the total of the two benefits as the case may be.
  6. If a person is unable to receive an Australian benefit as a result of the provisions of paragraph 4, or because the person did not claim the said benefit, it shall be deemed that if that person's spouse claims a benefit under the legislation of Australia, that the person receives that benefit.
  7. The reference in paragraph 6 to payment of a benefit under the legislation of Australia to the spouse, means the payment of any benefit, pension or allowance payable under the *Social Security Act 1947* as amended from time to time and whether payable by virtue of this Agreement or otherwise.

**PART III**

**PROVISIONS RELATING TO SPANISH BENEFITS**

**ARTICLE 10**

**Totalization for Spain**

1. Where this Agreement applies and there is a Spanish creditable period that is:
  - (a) less than the period necessary to give a claimant entitlement to the benefit claimed under Spanish legislation; and
  - (b) equal to or greater than the minimum period mentioned in paragraph 3 for that benefit,then any period of residence in Australia by the contributor to whom that Spanish creditable period was credited shall be deemed to be a Spanish creditable period.
2. For the purposes of this Article, where a Spanish creditable period and period of residence in Australia coincide, the period of coincidence shall be taken into account once only as a Spanish creditable period.
3. The minimum Spanish creditable period to be taken into consideration for the purposes of paragraph 1 shall be one year. However, where the Spanish creditable period is shorter than one year and the period of residence in Australia is also shorter than

**SCHEDULE—continued**

one year, but with the addition of both periods an entitlement to a Spanish benefit is obtained, they shall both be taken into account.

4. For the purposes of this Article the upper age limit for a woman, set in the definition of a period of residence in Australia in the legislation of Australia shall be raised from 60 years to 65 years for the purposes of claiming an old age pension under the legislation of Spain.

**ARTICLE 11**

Sickness Benefits

For the granting of benefits in case of sickness of a worker the totalization of periods referred to in Article 10 shall be taken into account, if necessary, without the condition imposed by subparagraph 1 (b) of Article 10.

**ARTICLE 12**

Old age, invalidity and survivors pensions

1. Entitlement by virtue of this Agreement to old age, invalidity or death and survivors benefit under the legislation of Spain shall be determined as follows:
  - (a) The Competent Institution shall determine, according to its own provisions, the amount of the benefit corresponding to the duration of the periods of insurance completed only under its legislation.
  - (b) The Competent Institution shall also examine the entitlement considering the provisions of Article 10. If, in application of it, entitlement to pension is obtained, the following rules shall apply for the calculation of the amount:
    - (i) the Competent Institution shall determine the theoretical pension to which the claimant would be entitled as if all the periods of insurance and/or residence totalized had been accomplished under its legislation;
    - (ii) the amount of the pension effectively due to the claimant, shall be that obtained after reducing the amount of the theoretical pension to a pro-rata pension, according to the period of insurance completed exclusively under the legislation of Spain and all the periods of insurance and residence completed in the two Parties; and
    - (iii) in no case shall the sum of the Spanish creditable periods and the periods of residence in Australia be taken to exceed the maximum period established by the legislation of Spain in regard to the benefit in question.



**SCHEDULE—continued**

2. Once the entitlement of the claimant has been established according to subparagraphs 1 (a) and (b) the Competent Institution shall assign the most favourable benefit.

**ARTICLE 13**

Special Scheme Benefits

If the legislation of Spain provides that in the determination of entitlement to or the granting of certain benefits there is a requirement that the Spanish creditable periods have been completed in an activity subject to a Special Scheme or, as the case may be, in a specific activity or specific employment, periods of residence in Australia completed under the legislation of Australia shall be taken into account when they have been accomplished in an equivalent scheme or in the same activity or in the same employment.

**ARTICLE 14**

Determination of Regulating Base

When, for determining the Regulating Base for benefits, periods of residence in Australia must be taken into account, the Spanish Competent Institution shall determine that Regulating Base on the minimum contribution bases in force in Spain, during that period or fraction of period, for the workers of the same category of professional qualification as the person concerned last had according to Spanish legislation.

**ARTICLE 15**

Situacion de alta

An Australian resident or a person in receipt of an Australian benefit shall be deemed to be validly insured (situacion de alta o asimilada) for the purposes of entitlement to benefit under the legislation of Spain.

**ARTICLE 16**

Unemployment Benefits

1. For the granting of unemployment benefits the totalization of periods referred to in Article 10 shall, if necessary, be taken into account without the condition imposed by subparagraph 1 (b) of that Article.
2. Notwithstanding the provisions of Article 20, unemployment benefits paid pursuant to paragraph 1 shall be paid during the periods established under the legislation of Spain and while the unemployed person resides in the territory of Spain.

**SCHEDULE—continued**

**ARTICLE 17**

Equivalence of Events

The continuing entitlement to a Spanish benefit shall be subject to the legislation of Spain and events which occur in Australia relevant to that continuing entitlement will be considered as if they had occurred in Spain.

PART IV

**MISCELLANEOUS AND ADMINISTRATIVE PROVISIONS**

**ARTICLE 18**

Lodgement of Documents

1. A claim, notice or appeal concerning a benefit, whether payable by a Party by virtue of this Agreement or otherwise, may be lodged in the territory of either of the Parties in accordance with administrative arrangements made pursuant to Article 22 at any time after the Agreement enters into force.
2. The date on which a claim, notice or appeal referred to in paragraph 1 is lodged with the Competent Institution of the other Party shall be treated, for all purposes concerning the matter to which it relates, as the date of lodgement of that document with the Competent Institution of the first Party.
3. In relation to Australia, the reference in paragraph 2 to an appeal document is a reference to a document concerning an appeal that may be made to an administrative body established by, or administratively for the purposes of, the social security laws of Australia.

**ARTICLE 19**

Determination of Claims

1. In determining the eligibility or entitlement of a person to a benefit by virtue of this Agreement:
  - (a) a period as an Australian resident and a Spanish creditable period; and
  - (b) any event or fact which is relevant to that entitlement,shall, subject to this Agreement, be taken into account in so far as those periods or those events are applicable in regard to that person no matter when they were accumulated or occurred.
2. The commencement date for payment of a benefit payable by virtue of this Agreement shall be determined in accordance with the legislation of the Party concerned but in no case shall that date be

**SCHEDULE—continued**

- a date earlier than the date on which this Agreement enters into force.
3. (a) Where a person receives or will receive a benefit from one Party and has received an overpayment of a benefit from the other Party, the Institution of the latter Party may request the Institution of the former Party to withhold the amount of the overpayment from the arrears of benefits payable by the former Party and transfer them to the Institution of the latter Party to recoup the amount of the overpayment.
  - (b) The Institution receiving a request under subparagraph (a) shall take the action set out in the Administrative Arrangement, as provided for in Article 22, to recoup the amount of the overpayment and to transfer it to the other Institution.
  - (c) The amount of the overpayment shall be a debt due by the person receiving it to the Party that paid it.
4. A reference in paragraph 3 to a benefit, in relation to Australia, means a pension, benefit or allowance that is payable under the Social Security Act 1947 of Australia as amended from time to time, and in relation to Spain, means any pension, benefit, allowance or advance made by an Institution including overpayments.

**ARTICLE 20**

**Payment of Benefits**

1. The benefits payable by virtue of this Agreement and listed in this paragraph shall be payable within and outside the territories of both Parties:
  - (a) for Australia:
    - age pensions,
    - invalid pensions,
    - wife's pensions, and
    - pensions payable to widows for persons who are Class B widows or Class A widows who were widowed in Australia.
  - (b) for Spain:
    - invalidity,
    - old age, and
    - death and survivors.
2. The benefits payable by virtue of this Agreement or otherwise and listed in this paragraph shall be paid in Australia and Spain with no limitation by time:

**SCHEDULE—continued**

- (a) for Australia:                    – carer's pensions, and  
  – pensions payable to widows who are  
  not included in subparagraph 1 (a).
  - (b) for Spain:                         – invalidity,  
  – old age, and  
  – death and survivors.
3. If a Party imposes legal or administrative restrictions on the transfer of its currency abroad, both Parties shall adopt measures as soon as practicable to guarantee the rights to payment of benefits derived under this Agreement. Those measures shall operate retrospectively to the time the restrictions were imposed.
  4. A benefit payable by a party by virtue of this Agreement shall be paid by that Party, whether the beneficiary is in the territory of the other Party or outside the respective territories of both Parties, without deduction for government administrative fees and charges for processing and paying that benefit.
  5. The payment outside Australia of an Australian benefit that is payable by virtue of this Agreement shall not be restricted by those provisions of the legislation of Australia which prohibit the payment of a benefit to a former Australian resident who returns to Australia becoming again an Australian resident, and lodges a claim for an Australian benefit and leaves Australia within 12 months of the date of that return.

**ARTICLE 21**

Exchange of Information and Mutual Assistance

1. The Competent Authorities shall:
  - (a) advise each other of laws that amend, supplement or replace the legislation of their respective Parties, promptly after the first-mentioned laws are made;
  - (b) advise each other directly of internal action to implement this Agreement and any Arrangement adopted for its implementation; and
  - (c) advise each other of any technical problems encountered when applying the provisions of this Agreement or of any Arrangement made for its implementation.
2. The Institutions of both Parties shall:
  - (a) advise each other of any information necessary for the application of this Agreement or of the respective legislation of the Parties concerning all matters within their area of competence arising under this Agreement or under those laws;

**SCHEDULE—continued**

- (b) assist one another in relation to the determination of any benefit under this Agreement or the respective legislation within the limits of and according to their own laws; and
  - (c) at the request of one to the other, assist each other in relation to the implementation of agreements on social security entered into by either of the Parties with third States, to the extent and in the circumstances specified in administrative arrangements made in accordance with Article 22.
3. The assistance referred to in paragraphs 1 and 2 shall be provided free of charge, subject to any arrangement reached between the Competent Authorities and Institutions for the reimbursement of certain types of expenses.
  4. Any information about a person which is transmitted in accordance with this Agreement to an Institution shall be protected in the same manner as information obtained under the legislation of that Party.
  5. In no case shall the provisions of paragraphs 1, 2 and 4 be construed so as to impose on the Competent Authority or Institution of a Party the obligation:
    - (a) to carry out administrative measures at variance with the laws or the administrative practice of that or the other Party; or
    - (b) to supply particulars which are not obtainable under the laws or in the normal course of the administration of that or the other Party.
  6. In this Article the meaning of “legislation” is not confined by any restrictions imposed by Article 2.
  7. In the application of this Agreement, the Competent Authority and the Institutions of a party may communicate with the other in the official language of that Party.

**ARTICLE 22**

Administrative Arrangements

The Competent Authorities of the Parties shall make whatever administrative arrangements are necessary in order to implement this Agreement.

**ARTICLE 23**

Review of Agreement

Where a Party requests the other to meet to review this Agreement, the Parties shall meet for that purpose no later than 6 months after that request was made and, unless the Parties otherwise arrange, their

**SCHEDULE—continued**

meeting shall be held in the territory of the Party to which that request was made.

**PART V**

**FINAL PROVISIONS**

**ARTICLE 24**

**Entry Into Force and Termination**

1. This Agreement shall enter into force one month after an exchange of notes by the Parties through the diplomatic channel notifying each other that all constitutional or legislative matters as are necessary to give effect to this Agreement have been finalized.
2. Subject to paragraph 3, this Agreement shall remain in force until the expiration of 12 months from the date on which either Party receives from the other a note through the diplomatic channel indicating the intention of the other Party to terminate this Agreement.
3. In the event that this Agreement is terminated in accordance with paragraph 2, the Agreement shall continue to have effect in relation to all persons who:
  - (a) at the date of termination, are in receipt of benefits; or
  - (b) prior to the expiry of the period referred to in that paragraph, have lodged claims for, and would be entitled to receive, benefits, by virtue of this Agreement.

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement.

DONE in 2 copies at CANBERRA this 10th day of FEBRUARY 1990 in the Spanish and English languages, each text being equally authoritative.

FOR AUSTRALIA:  
BRIAN HOWE

FOR SPAIN:  
JOSE LUIS PARDOS

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**NOTES**

1. No. 26, 1947, as amended. For previous amendments, see Nos. 38 and 69, 1948; No. 16, 1949; Nos. 6 and 26, 1950; No. 22, 1951; Nos. 41 and 107, 1952; No. 51, 1953; No. 30, 1954; Nos. 15 and 38, 1955; Nos. 67 and 98, 1956; No. 46, 1957; No. 44, 1958; No. 57, 1959; No. 45, 1961; Nos. 1 and 95, 1962; No. 46, 1963; Nos. 3 and 63, 1964; Nos. 57 and 152, 1965; No. 41, 1966; Nos. 10 and 61, 1967; No. 65, 1968; No. 94, 1969; Nos. 2 and 59, 1970; Nos. 16 and 67, 1971; Nos. 1, 14, 53 and 79, 1972; Nos. 1, 26, 48, 103 and

**NOTES—continued**

- 216, 1973; Nos. 2, 23 and 91, 1974; Nos. 34, 56, 101 and 110, 1975; Nos. 26, 62 and 111, 1976; No. 159, 1977; No. 128, 1978, No. 121, 1979 (as amended by Nos. 37 and 98, 1982); No. 130, 1980; Nos. 61 and 170, 1981; No. 159, 1981 (as amended by No. 98, 1982); Nos. 37, 38 and 148, 1982; Nos. 4 and 36, 1983; No. 69, 1983 (as amended by No. 78, 1984); Nos. 46, 78, 93, 120, 134 and 165, 1984; Nos. 24, 52, 95, 127 and 169, 1985; Nos. 5, 28, 33, 106, 130 and 152, 1986; Nos. 77, 88 and 130, 1987; Nos. 13, 35, 58, 75 and 85, 1988; Nos. 133 and 135, 1988 (as amended by Nos. 84 and 164, 1989); and Nos. 59, 83, 84, 163 (as amended by No. 164, 1989) and 164, 1989.
2. No. 27, 1986, as amended. For previous amendments, see Nos. 106 and 130, 1986; Nos. 78 (as amended by No. 164, 1989), 88 and 130, 1987; Nos. 13, 35, 75, 99 and 134 (as amended by No. 164, 1989), 1988; No. 135, 1989 (as amended by No. 84, 1989); and Nos. 59, 83, 163 and 164, 1989.
  3. No. 164, 1989.



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